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LABOR LEGISLATION AND THE CONSTITUTION ¹

OWEN R. LOVEJOY

Secretary, National Child Labor Committee

THE time is so brief I will confine myself to one point, the third, which Mr. Elkus mentioned in his outline—the possibility of incorporating in the constitution a provision which shall give the legislature power to regulate absolutely the nature and condition of places in which manufacturing is carried on.

The regulation of employment in tenement houses was one of the important questions before the factory investigating commission during the past two years, and some of the most striking evidence of bad industrial conditions was regarding child labor and unsanitary surroundings in tenement homes in this city.

When we presented some of the evidence gathered before the commission was created, and further evidence gathered in coöperation with it, we urged upon the commission the possibility of introducing a bill in the legislature which should absolutely prohibit the manufacture or preparation of any goods for commercial purposes in tenement rooms, and unless I am mistaken there was a very strong conviction on the part of the commission that this would be in the interest of social conservation as well as in the interest of good business. But the commission faced the problem which Mr. Elkus has been discussing, of having such a bill meet the test of the courts.

It was believed that if a broad provision covering everything should become law, the courts would hold it unconstitutional; therefore, as he has explained, the new law provides against the manufacture of foodstuffs and of infants' wear, and it further provides that no child under fourteen years of age

¹ Discussion at the meeting of the Academy of Political Science, November 20, 1914.

shall be employed in tenement rooms to work either for outside parties or for its own parents. The point we urged against this bill, while pending, was that in its very nature it is unenforcible. No matter how imperative it is from the standpoint of good law to see that a law is so constructed that it will pass the test of the courts, we, as laymen, as citizens of the state, are concerned to see that conditions shall not continue to jeopardize the health both of the producer and of the consumer. We contended that whereas a small force of factory inspectors might inspect our factories, or mercantile inspectors might inspect our stores, because everything is open, and one man going on the floor of an establishment will be able to see practically all that is going on, tenement-house inspection is of an entirely different nature. If we were to adhere to the state's policy of an eight-hour day for its employes it would require thirty-nine thousand inspectors in order to inspect thoroughly the thirteen thousand licensed tenements in this city, in which goods might be manufactured for the market. We should need one inspector for each tenement for each eight-hour shift in the twenty-four; because the hour before the inspector comes or the hour after he is gone, no one can tell whether child labor is being employed or not, or whether conditions prevail that could not pass the test of the state's rules.

We contended that it is impossible for one inspector to go about from place to place and be sure that his inspection is thorough; that tenement-house inspection, in a way, is like meat inspection, where the government inspector goes into a packing house, and stays in one place from the time it opens until it closes, inspecting every particle of product that passes through the establishment.

We are not sure what the result of the new law has been because we have been unable to make any investigation, and I think the commission has been unable to make any investigation since the new law went into effect.

We have the impression from various sources interested only in public welfare, that while the inspectors have been vigilant and faithful in the performance of their duties, they have

not been able to discover the root of the evil, and that children, even to-day—or rather after school hours to-night, and as late into the night as they can be kept awake—children as young as six and five and four years are still employed in picking apart petals for the manufacture of artificial flowers, doing the simpler processes in embroidery work, and doing other things still carried on legally in the tenement houses of this city. Therefore, as neither a political economist nor a lawyer, but simply as a citizen of the state of New York, I want to urge with all possible emphasis that the new constitution shall provide in some way, either specifically, or by withholding any limitations, that a law may be passed which shall prevent the continuance of the distribution of the charges of manufacture among the helpless, disorganized, inarticulate army of ignorant workers who are employed to do the simple processes in our industrial work. They are helpless; they cannot get together; there is no way for them to organize; they do not even know of one another's existence, and the possibility of improving conditions seems to me to lie only in the absolute elimination of the process. That is the first point I want to present.

But even if we do this as citizens of New York, we should still be, in a measure, helpless, because the legal provision I have been urging is not only for the protection of the employes, of the producers in the tenements, but for the protection of the consumer. We do not wish to receive goods prepared under conditions which may jeopardize health when they come into our homes.

Suppose this law were passed or incorporated in the new constitution. We should then see a still greater exodus than has already occurred of the New York city tenement-house manufacturing industries to the Jersey shore, to be carried on under the very conditions we have condemned in the metropolitan district on this side of the Hudson River. In order to prevent that, let me suggest that under the general "limitations on governmental powers" the citizens of New York are powerless to protect themselves from the bad policy that may continue for a few years in New Jersey. Since New York is

powerless to protect itself, since it has delegated this power to another governmental power, namely, the federal government, I want to urge that those interested in securing this sort of protection shall interest themselves also in the passage during the present Congress of the Palmer-Owen Bill, which seeks to forbid interstate commerce in the products of child labor. Such a law would make it impossible for our friends over in Jersey to ship their tenement-made goods to us.

JOHN B. ANDREWS

Secretary, American Association for Labor Legislation

Concerning the points raised by Mr. Elkus I wish merely to say that the movement for minimum-wage legislation for women is well under way. Probably we have not very much to worry about concerning it. It is largely a question of making the need clear. This is also true in a measure with respect to the legal regulation of working hours. With reference to the delegation, so-called, of legislative power to commissions for the handling of questions of safety and sanitation, no one can emphasize too much the need of such provisions. It would be absurd for us in this country to attempt to get specific safety regulations and specific sanitary legislation through a state legislature, and make these rules fit conditions over the whole industrial field; it cannot be done that way. This administration method, which is not new in public utilities, in health matters, and in various other forms of social control, must be further extended in the field of labor legislation.

Instead of discussing these points, I shall try to present merely a point of view which has not been much stressed in these meetings. During the last twenty-four hours we have had the complex question of "constitutionality" presented from almost every point of view. It has been discussed from the points of view of the man who wants laws, the man who drafts laws, the man who gets them passed, the man who passes them, and I think also from the standpoint of the man who

finally passes upon them. But these laws are supposed to be made for a purpose. I should like to try to express the point of view of the people for whose benefit these laws are supposed to be passed.

About fifty years ago, in troublous times, Abraham Lincoln made an appeal ending with these words: "Let reverence for law become the political religion of the nation." We have made some progress since that time, but there have also been serious reactions. It has been very popular, for instance, during the past few years in certain quarters rather to sneer at labor legislation. It has been rather popular to minimize the value of laws which are passed for the protection of the workers. The I. W. W., for example, refer to labor laws as "gold bricks," "narcotics," and "scarecrows that scare no crows." And there is a reason for that.

The principal reason is that the laws are not sufficiently enforced. That is, after all, the greatest trouble—not the constitutions, not the legislature. The greatest trouble is in getting these laws enforced after we have them on the statute books, and one way to do that is to get them so plainly stated and to get the constitutional limitations so plainly stated that there will be no further doubt concerning what can be done.

In California, only three years ago, the women, the social workers and the labor group decided that they would try, by the legislative method, to get an eight-hour law for women in certain employments, and the wise lawyers in California, many of them, said it could not be done, that that would be "class legislation," that it applied to only one group of workers and to them in only a few of the occupations.

A few weeks ago, in California again, a bill was drafted and was presented at the recent election, providing for a universal eight-hour day for all employes, men and women, and the same lawyers said that that clearly would be unconstitutional. Just before election Governor Johnson referred the matter to the attorney general of the state, and he promptly handed down an opinion that this clearly would be unconstitutional, because it applied to all employments and to all workers. The significant thing is that in spite of this, 250,000 voters in the

state of California voted for that bill. Similar bills were before the people in Oregon and in Washington. A similar bill is to be presented to the legislature in Utah in January. Hardly had the ballots been counted in those western states when in Ohio a big movement was under way to get 33,000 signatures upon a petition in order to present a plan for a universal eight-hour day to the people of the state of Ohio. These movements sweep rapidly over the country. Clearly the point made by Mr. Elkus regarding the need of legislative regulation of hours should be faced squarely and honestly and should be stated with unmistakable clearness by the constitutional convention in this state.

There is in this field a great opportunity for careful work in draftsmanship, and I believe it is partly through the work of such men as Mr. Parkinson and his associates that the real result at which we aim can be reached. Unless we do get legal authority plainly stated, in order, for example, that the workers may select, clearly and in advance of expensive campaigns, either one of the two forces which they can use—either the method of strikes and collective bargaining, or the method of legal enactment—we are bound to increase in this country a contempt for the law, rather than to develop a reverence for the law.